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REMARKS

Reconsideration and allowance of the present patent application based on the foregoing amendments and following remarks are respectfully requested.

By this Amendment, claims 7, 15, 34, 35, 39, 40, 46, 53 and 67 are amended and new dependent claims 74-77 are added to further recite the claimed invention without the intention of narrowing the scope of any of the claims. No new matter has been added. New claims 74-77 find support in the application and are patentable for at least the same reasons provided that their independent claims are patentable and for the additional features recited therein. Claims 1-77 are pending in this patent application, of which claims 22-33 are withdrawn from consideration.

The Office Action rejects claims 1-21 and 34-73 under 35 U.S.C. §102(e) as being anticipated by United States patent no. US 6,449,647 to Colby et al. ("Colby"). Applicant respectfully traverses the rejection because Colby fails to disclose, teach or suggest all of the features in the rejected claims.

Colby discloses a content-aware flow switch that intercepts a client content request in an Internet Protocol network (TCP SYN's and/or HTTP GET's from the client), and transparently directs the content request to a best-fit server. The best-fit server is chosen by the content-aware flow switch based on the type of content requested, the quality of service requirements implied by the content request, the degree of load on available servers, network congestion information, and the proximity of the client to available servers. (Colby, abstract and col. 2, lines 54-64). The content request initiates a flow, which is a series of frames exchanged between two connection endpoints defined by a layer 3 network address and a layer 4 port number pair for each end of the connection. The flow that is created in response to the request consists of (1) packets containing the requested content, and (2) control messages exchanged between the two endpoints. (Colby, col. 2, lines 5-13).

With respect to independent claims 1 and 61, Applicant respectfully submits that Colby at least fails to disclose, teach or suggest a method (as recited in claim 1) or a computer program product including computer program code to cause a computer to perform a method (as recited in claim 61), the method comprising, *inter alia*, providing a plurality of TCP ports with each TCP port receiving network communications of a different level of priority and directing a network communication to one of the plurality of TCP ports receiving communications of a determined level of priority as recited in claims 1 and 61.

While Colby discloses ports, Applicant respectfully submits that the cited portions of

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Colby fail to disclose, teach or suggest that the ports receive network communications of a different level of priority. The ports in Colby may receive communications of a same level of priority. Moreover, even if ports in Colby did receive network communications of a different level of priority, the cited portions of Colby provide no disclosure, teaching or suggestion that the switch or any other device in Colby directs a network communication to one of the plurality of TCP ports receiving communications of a determined level of priority. Colby merely discloses redirecting network communications to a server available to service the network communications.

Therefore, for at least the above reasons, Colby fails to disclose, teach or suggest all the features recited by independent claims 1 and 61. Claims 2-6 depend from claim 1 and are, therefore, patentable for at least the same reasons provided above related to claim 1 and for the additional features recited therein. Claims 62-66 depend from claim 61 and are, therefore, patentable for at least the same reasons provided above related to claim 61 and for the additional features recited therein. As a result, Applicants respectfully submit that the rejection of claims 1-6 and 61-66 under 35 U.S.C. §102(e) should be withdrawn and the claims allowed.

As for independent claims 7, 40, and 53, Applicant respectfully submits that Colby at least fails to disclose, teach or suggest a method (as recited in claim 7) and a computer program product including computer program code to cause a computer to perform a method (as recited in claim 53), the method comprising, *inter alia*, determining based upon data in a coupon associated with a source, the coupon defining a mode of prioritization, that the communications traffic should receive prioritization, and applying the mode of prioritization defined by the coupon to all subsequent communications traffic from the source until the mode of prioritization is terminated or modified as recited in claims 7 and 53. Further, Applicant respectfully submits that Colby at least fails to disclose, teach or suggest a system comprising, *inter alia*, means for determining based upon data in a coupon associated with a source, the coupon defining a mode of prioritization, that the communications traffic should receive prioritization, and applying the mode of prioritization defined by the coupon to all subsequent communications traffic from the source until the mode of prioritization is terminated or modified as recited in claim 40.

While Colby discloses prioritization as a general concept, it does so in a different way than as recited in claims 7, 40 and 53. In particular, the switch in Colby fails, and has no mechanism, to persist any sort of prioritization across content requests. Rather, the switch in Colby must evaluate each content request to determine a best-fit server to handle the flow,

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irrespective of the particular source from which the flow request originates, leading to significant overhead. Instead, the claimed inventions of claims 7, 40 and 53 are arranged to make a determination based upon data in a coupon associated with a source that the communications traffic should receive prioritization and apply a mode of prioritization defined by the coupon to all subsequent communications traffic from the source until the mode of prioritization is terminated or modified. Once a mode of prioritization is determined, subsequent communications traffic from the source would inherit the mode of prioritization until the mode of prioritization is terminated or modified. Thus, the mode of prioritization is persisted and there would not be a requirement to make a full prioritization determination for all communications traffic as in Colby.

Therefore, for at least the above reasons, Colby fails to disclose, teach or suggest all the features recited by independent claims 7, 40, and 53. Claims 8-14 depend from claim 7 and are, therefore, patentable for at least the same reasons provided above related to claim 7 and for the additional features recited therein. Claims 41-45 depend from claim 40 and are, therefore, patentable for at least the same reasons provided above related to claim 40 and for the additional features recited therein. Claims 54-60 depend from claim 53 and are, therefore, patentable for at least the same reasons provided above related to claim 53 and for the additional features recited therein. As a result, Applicants respectfully submit that the rejection of claims 7-14, 40-45 and 53-60 under 35 U.S.C. §102(e) should be withdrawn and the claims allowed.

Regarding independent claims 15, 46, and 67, Applicant respectfully submits that Colby at least fails to disclose, teach or suggest a method (as recited in claim 15) and a computer program product including computer program code to cause a computer to perform a method (as recited in claim 67), the method comprising, *inter alia*, determining that the communications traffic from a client or user should receive a mode of prioritization, and applying the mode of prioritization to all subsequent communications traffic from the client or user until the mode of prioritization is terminated or modified as recited in claims 15 and 67. Further, Applicant respectfully submits that Colby at least fails to disclose, teach or suggest a system comprising, *inter alia*, means for determining that the communications traffic from a client or user should receive a mode of prioritization, and applying the mode of prioritization to all subsequent communications traffic from the client or user until the mode of prioritization is terminated or modified as recited in claim 46.

Similarly to as discussed above, while Colby discloses prioritization as a general concept, it does so in a different way than as recited in claims 15, 46 and 67. In particular, the

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switch in Colby fails, and has no mechanism, to persist any sort of prioritization across content requests. Rather, the switch in Colby must evaluate each content request to determine a best-fit server to handle the flow, irrespective of the particular client or user from which the flow request originates, leading to significant overhead. Instead, the claimed inventions of claims 15, 46 and 67 are arranged to make a determination that the communications traffic from a client or user should receive a mode of prioritization and apply the mode of prioritization to all subsequent communications traffic from the client or user until the mode of prioritization is terminated or modified. Once a mode of prioritization is determined, subsequent communications traffic from the source would inherit the mode of prioritization until the mode of prioritization is terminated or modified. Thus, the mode of prioritization is persisted and there would not be a requirement to make a full prioritization determination for all communications traffic as in Colby.

Therefore, for at least the above reasons, Colby fails to disclose, teach or suggest all the features recited by independent claims 15, 46, and 67. Claims 16-21 depend from claim 15 and are, therefore, patentable for at least the same reasons provided above related to claim 15 and for the additional features recited therein. Claims 47-52 depend from claim 46 and are, therefore, patentable for at least the same reasons provided above related to claim 46 and for the additional features recited therein. Claims 68-73 depend from claim 67 and are, therefore, patentable for at least the same reasons provided above related to claim 67 and for the additional features recited therein. As a result, Applicants respectfully submit that the rejection of claims 15-21, 46-52 and 67-73 under 35 U.S.C. §102(e) should be withdrawn and the claims allowed.

Lastly, Applicant respectfully submits that Colby at least fails to disclose, teach or suggest a server comprising, *inter alia*, an in-line prioritization unit to determine that the communications traffic from a source should receive a mode of prioritization and a prioritization mode unit to apply the mode of prioritization to all subsequent communications traffic from the source until the mode of prioritization is terminated or modified as recited in claim 34.

Similarly to as discussed above, while Colby discloses prioritization as a general concept, it does so in a different way than as recited in claim 34. In particular, the switch in Colby fails, and has no mechanism, to persist any sort of prioritization across content requests. Rather, the switch in Colby must evaluate each content request to determine a best-fit server to handle the flow, irrespective of the particular client or user from which the flow request originates, leading to significant overhead. Instead, the claimed invention of claim 34

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is arranged to make a determination that the communications traffic from a source should receive a mode of prioritization and apply the mode of prioritization to all subsequent communications traffic from the source until the mode of prioritization is terminated or modified. Once a mode of prioritization is determined, subsequent communications traffic from the source would inherit the mode of prioritization until the mode of prioritization is terminated or modified. Thus, the mode of prioritization is persisted and there would not be a requirement to make a full prioritization determination for all communications traffic as in Colby.

Therefore, for at least the above reasons, Colby fails to disclose, teach or suggest all the features recited by independent claim 34. Claims 35-39 depend from claim 34 and are patentable for at least the same reasons provided above related to claim 34 and for the additional features recited therein. Thus, Applicants respectfully submit that the rejection of claims 34-39 under 35 U.S.C. §102(e) should be withdrawn and the claims allowed.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance. If questions relating to patentability remain, the examiner is invited to contact the undersigned to discuss them.

Should any fees be due, please charge them to our deposit account no. 03-3975, under our order no. 016712/0281228. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced deposit account.

Respectfully submitted,

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**CERTIFICATION OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. §1.8**

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office at (571) 273-8300 on August 8, 2005.

Jean-Paul G. Hoffman

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